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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/786,728	02/25/2004	Walter D. Jaeger	PII-11902/03	2736

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EXAMINER

PAPE, JOSEPH

ART UNIT	PAPER NUMBER
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3612

DATE MAILED: 02/10/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/786,728

Applicant(s)

JAEGER ET AL.

Examiner

Joseph D. Pape

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
4a) Of the above claim(s) 4-9 is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-3 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 2/25/04 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 10/8/04.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

DETAILED ACTION

Election/Restrictions

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - I. Claims 1-3, drawn to a bumper bar, classified in class 293.
 - II. Claims 4-9, drawn to a method for fabricating a bumper bar, classified in class 29.

The inventions are distinct, each from the other because of the following reasons:

2. Inventions II and I are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case the process as claimed can be used to form a non-tubular beam.
3. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

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4. Because these inventions are distinct for the reasons given above and the search required for Group II is not required for Group I, restriction for examination purposes as indicated is proper.

5. During a telephone conversation with Mr. Citkowski on 2/3/05 a provisional election was made without traverse to prosecute the invention of group I, claims 1-3. Affirmation of this election must be made by applicant in replying to this Office action. Claims 4-9 withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

6. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Drawings

7. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: Reference character "S" on page 4, the third line from the bottom, and of "X" on the top of page 5 do not appear in the drawings.

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Applicant indicated that the drawings filed 2/25/04 are informal. The examiner notes that the line quality of the drawings and of the reference characters is poor. Also, the text appearing on Figure 3 is improper.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Specification

8. The disclosure is objected to because of the following informalities:

On page 4, line 7, it is thought that "11" should be changed to –15—to correspond to the drawings and the rest of the specification. On page 4, the third to last line, "an" should be changed to –a—for greater clarity.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

9. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

10. Claims 1-3 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The recitation of a bumper "bar" in the preamble of claim 1 and then reciting that this "bar" includes a "tubular beam" is indefinite. The Webster's II New Riverside University Dictionary defines a "bar" as being "a straight rigid piece of solid material" and "tubular" to mean a "hollow cylinder". It is unclear how the recited bar can be solid and hollow. For the treatment of the claims based upon prior art, the beam will be treated as being "tubular" as shown in the drawings.

The inferential mention of "a beam having a constant sweep" on the last line of claim 2 is indefinite in that the instant invention is defined relative to an imaginary "beam having a constant sweep" which is unclear. Applicant should set forth the instant invention by recitation of the features inherent to the curved beam thereof.

Claim Rejections - 35 USC § 102

11. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

12. Claims 1 and 2, as understood, are rejected under 35 U.S.C. 102(e) as being anticipated by Evans.

Evans discloses a roll formed beam 102 formed along a sweep axis with the sweep axis includes two reverse curvatures at 103, 104 to form symmetrical inflection points. Note that the ends of the beam 102 are not in alignment relative to one another indicating a sweep or "curve" to the beam in addition to the central reverse curvatures. Reference Figure 2. The central section 105 of the beam 102 extends beyond the outline (inwardly) that would be formed by the beam 102 if no reverse curvatures were formed therein.

Claim Rejections - 35 USC § 103

13. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

14. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of

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the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

15. Claim 3, as understood, is rejected under 35 U.S.C. 103(a) as being unpatentable over Evans in view of McCoy et al.

Evans discloses the claimed invention as explained above in paragraph 14. The beam of Evans is used to secure a hitch receiver thereto.

Evans does not disclose the specific material out of which bumper beam 102 is made.

McCoy et al. '244 disclose a "bumper beam" including curved sections 14 which is used to secure a hitch receiver thereto and which is made out of steel. See column 3, line 6.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to construct the hitch supporting bumper beam of Evans out of steel as taught by the hitch supporting bumper type beam of McCoy et al. '244 in order to provide the beam of Evans with sufficient strength for the forces to be exerted thereon during use. Further, such a material, steel, is inherently considered to be of "high-strength" as compared to other possible material choices.

Conclusion

16. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

McCoy et al. '031 and Shaw et al. disclose beams with reverse curves therein. The other cited references show other "beams" shaped similarly to the claimed invention.

17. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph D. Pape whose telephone number is (703) 308-3426. The examiner can normally be reached on Tues.-Fri. (6:00-4:30).

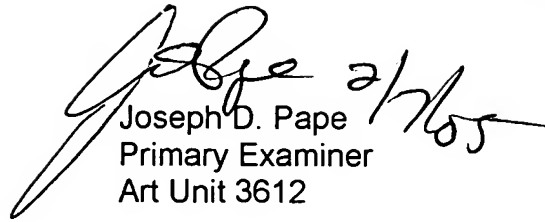
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glenn Dayoan can be reached on (703) 308-3102. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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A handwritten signature in black ink, appearing to read 'J. Pape', followed by the date '2/7/05' written in a cursive style.

Joseph D. Pape
Primary Examiner
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Jdp

February 7, 2005